S.B.CIVIL WRIT PETITION NO.5107/2004

Mukhtiar Singh

versus

State of Rajasthan & Ors.

DATE OF ORDER :: 5th February, 2007

HON'BLE MR.JUSTICE GOVIND MATHUR

Mr. B.S.Sandhu, for the petitioner.
Mr. S.S.Ladrecha, Addl.Govt.Advocate.

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The appointment was given to the petitioner as Beldar on 2.6.1986 at Nursery, Thalarka under the Department of Forest. On completion of two years of service semi permanent status was conferred to the petitioner under an order dated 30.3.1992 passed by the Deputy Conservator, Forest. The petitioner was ordered to be retired from service w.e.f. 30.6.2000 under an order dated 28.6.2000 but this Court in a writ petition preferred by the petitioner (SBCWP No.4215/2000) set aside the order dated 28.6.2000 with a direction to the respondents to reinstate the petitioner in service. Accordingly, the petitioner was reinstated and he was retired from service w.e.f. 31.5.2003 on achieving the age of superannuation. The grievance of the petitioner in the instant petition for writ is that the respondents were required to declare him a permanent employee on completion of 10

years of service from the date of his initial appointment i.e. 2.6.1986. It is also stated that as a consequent to non-confirmant of permanent status on completion of 10 years of service from the date of initial appointment the petitioner is not only deprived of regular pay scale but is also effected adversely in payment of retiral benefits. According to counsel for the petitioner if the respondents would have declared the petitioner permanent w.e.f. 2.6.1996 he should have been placed on regular cadre in view of the decision of the Government of Rajasthan to absorb all work-charged employees in regular cadre, if, they have acquired permanent status prior to 1.1.1998.

In reply to the writ petition it is stated by the respondents that the initial appointment of the petitioner was under National Rural Employment Programme and as per the guidelines of the State Government the period of service under the programme referred above could not be included in the term of two years while determining services for confirmant of semi permanent status. It is further stated that the semi permanent status to the petitioner w.e.f. 1.4.1989 was erroneously conferred and the same was corrected under an order dated 16.1.1995, as such the date of initial appointment of the petitioner according to the respondents is 1.4.1991 and not as referred by the petitioner in petition for writ.

Heard counsel for the parties.

The service conditions of the work-charged employees of the Department of Forest, Government of Rajasthan are governed by the certified standing orders of 1973. The standing orders of 1973 are having application to the work charged establishment under the Department of Forest, Government of Rajasthan and for the persons with regard to whom no rules are framed under proviso to Article 309 of the Constitution of India. The term “work charged establishment” is also defined under the Standing Orders of 1973 and according to that it includes the establishments where work or sub-work is taken by the employees for its actual execution or under subordinate supervision. The petitioner was admittedly appointed as Beldar at a Nursery of the Department of Forest on 2.6.1986. According to the respondents the Nursery where the petitioner was working was under National Rural Employment Programme. The National Rural Employment Programme was executed by the Department of Forest and the Nursery where the petitioner was working was also under the supervision of the Department of Forest, therefore, merely on the count that at one point of time appointment was given to the petitioner under National Rural Employment Programme, it cannot be said that no relationship of master and servant was existing between the petitioner

and the Department of Forest. The petitioner for all purposes was working with the Department of Forest, may that be a truth that the appointment was given to him in National Rural Employment Programme. The appointment under the programme referred above and the Nursery where the petitioner was working being under the supervision and control of the Department of Forest, the date of initial appointment of the petitioner is required to be treated as 2.6.1986. The petitioner, therefore, become entitled for confirmant of semi permanent status on completion of two years of service and permanent status on completion of 10 years of service by taking into consideration 2.6.1986 as the date of his initial appointment.

Accordingly, this petition for writ deserves acceptance. The same, therefore, is allowed. The respondents are directed to consider candidature of the petitioner for the purpose of confirmant of permanent status on completion of 10 years of service from the date of his initial appointment i.e. 2.6.1986. In the event the petitioner is found suitable for grant of permanent status on completion of 10 years of service from 2.6.1986 the respondents shall also consider case of the petitioner for taking him on regular cadre of Beldars in view of the decision of Government of Rajasthan for absorption of work charged employees in its regular cadre if they have acquired permanent status prior to 1.1.1998. The

pension and all other post retiral benefits of the petitioner were also required to be re-determined, revised and paid to the petitioner accordingly.

( GOVIND MATHUR ),J.

kkm/ps.